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11 Bureau of Consumer Financial Protection

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

9 Bureau of Consumer Financial Protection, Case Number  
10 Plaintiff,  
11 v.  
12 Village Capital & Investment LLC, COMPLAINT  
13 Defendant.

16 The Bureau of Consumer Financial Protection (Bureau) brings this action against  
17 Village Capital & Investment LLC (Village Capital or the Company) under the Consumer  
18 Financial Protection Act of 2010 (CFPA), 12 U.S.C. §§ 5531, 5536(a), 5564, 5565, and  
19 alleges as follows.

## **Jurisdiction and Venue**

21 1. This Court has subject-matter jurisdiction over this action because it is  
22 brought under “Federal consumer financial law.” 12 U.S.C. § 5565(a)(1), presents a federal

1 question, 28 U.S.C. § 1331, and is brought by an agency of the United States, 28 U.S.C. §  
2 1345.

3           2.       Venue is proper because the Company resides and transacts business in this  
4           district. 12 U.S.C. § 5564(f).

## Parties

6           3.       The Bureau is an independent agency of the United States created by the  
7       CFPA. 12 U.S.C. § 5491(a). The Bureau has independent litigating authority and is  
8       authorized to initiate civil actions in federal district court to secure appropriate relief for  
9       violations of “Federal consumer financial law,” 12 U.S.C. § 5564(a)-(b), including the  
10      CFPA, 12 U.S.C. § 5481(14).

11 4. Village Capital is a non-bank mortgage company headquartered in Henderson,  
12 Nevada. At all times material to this Complaint, the Company transacted business in this  
13 district and elsewhere. The Company extends credit to consumers and is therefore a "covered  
14 person" under the CFPA. 12 U.S.C. § 5481(5)-(7), (15)(A)(i).

## **Factual Background**

16 5. Village Capital offers a product known as an Interest Rate Reduction  
17 Refinancing Loan (IRRRL), which allows veterans, with a loan guaranteed by the  
18 Department of Veterans Affairs, to refinance their mortgages at lower interest rates.

19        6.        The Company has roughly 100 employees and ten branches in ten states,  
20 including San Antonio, Texas. Its loan portfolio consists of about 28,000 mortgages.

21           7.       Village Capital markets its products to potential customers primarily through  
22 phone calls and direct mail.

1       8.     The Company's loan officers are responsible for taking calls from potential  
2 customers and talking customers through the loan process, from filling out the application  
3 through closing.

4       9.     In March 2017, Village Capital hired a team of loan officers to staff a new  
5 office in San Antonio, Texas, with the primary responsibility of generating loans through in-  
6 home visits to veterans.

7       10.    Between March 2017 and August 2018, the San Antonio office employed five  
8 loan officers responsible for in-home sales presentations to veterans to induce them to  
9 refinance their loans with the Company.

10      11.    The San Antonio office primarily received leads for potential consumers from  
11 the Company's corporate office.

12      12.    Loan officers were provided with preset in-home appointments with veterans,  
13 a computer, a PowerPoint presentation, an Excel spreadsheet, a corresponding laminated  
14 worksheet, and a script for use at the in-home sales presentations.

15      13.    Village Capital's San Antonio office designed the Excel spreadsheets for the  
16 loan officers to generate the financial data illustrating the supposed benefits of refinancing.  
17 The corresponding worksheet was the consumer-facing document designed to show the  
18 consumer the benefits of refinancing.

19      14.    Loan officers were instructed to go over the PowerPoint presentation with the  
20 consumer, introducing Village Capital and its loan products. After the presentation, loan  
21 officers were to ask the consumers for their current mortgage documents and begin the sales  
22 pitch using the laminated worksheet.

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1       15.    Loan officers were instructed to fold the worksheet in half; the top of the  
2 worksheet states “Here’s what most banks don’t want you to know. . . .” Loan officers were  
3 instructed to write the consumers’ current mortgage details (e.g., interest rate, taxes,  
4 insurance, total house payment) on the worksheet and to read consumers the language printed  
5 on the worksheet, stating, “I want to show you a benefit that is going to put you and your  
6 family in a much better financial situation. The Veterans Administration designed a benefit  
7 which was approved by the U.S. Congress to Honor Americas Veterans. *Let me show you  
8 how it works. . . .*”

9       16.    Loan officers were trained to then flip the worksheet and begin using the  
10 Excel spreadsheet to “compare apples to apples” the consumer’s current loan and the  
11 refinanced loan.

12       17.    Using the consumers’ current mortgage details, loan officers would then enter  
13 those numbers into the Excel spreadsheet and walk consumers through a comparison of their  
14 current mortgage and the new mortgage at 38 months, 4 years, 5 years, and 20 years. The  
15 bottom of the worksheet states “Obviously, our worst case scenario is MUCH BETTER than  
16 your best case scenario, isn’t it?”

17       18.    Loan officers were trained to flip the worksheet again to the last page and  
18 write the numbers derived from the Excel spreadsheet onto the worksheet with a dry erase  
19 marker. The loan officers would then use the worksheet to go over the “immediate benefits”  
20 of the program, including the “total monthly benefit” and the fees.

21       19.    After the presentation, loan officers would wipe the laminated worksheet  
22 clean so that it could be used for the next presentation.

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1        20. The formulas in the Excel spreadsheets loan officers used during in-home  
2 presentations to calculate the “apples to apples” comparison between consumers’ mortgages  
3 and the IRRRL were flawed. Because the flawed formulas produced inaccurate results, the  
4 figures used in the worksheets and quoted to consumers were misleading.

5        21. Specifically, the Excel spreadsheets, and therefore the worksheets presented to  
6 consumers, were deceptive because they misrepresented the cost savings to the consumer of  
7 the refinanced loan by: (1) inflating the future amount of principal owed under the existing  
8 mortgage by underestimating the proportion of the consumer's existing monthly payment  
9 that is applied to principal; (2) underestimating the future amount of the refinanced  
10 mortgage's monthly payments by overestimating the loan's term; and (3) overestimating the  
11 total monthly benefit of the loan after the first month.

## Count I

## **Deceptive Acts or Practices, in Violation of the CFPA**

14 22. The allegations in paragraphs 1 to 21 are incorporated here by reference.

15        23. An act or practice is deceptive if it involves a material misrepresentation or  
16 omission that is likely to mislead consumers acting reasonably under the circumstances.

17 24. Information that is material to consumers is information that is important and  
18 is likely to affect a consumer's choice of, or conduct regarding, the product or service.

19 25. During in-home presentations, Village Capital's loan officers misrepresented  
20 the benefit to the consumer of refinancing. This information is material and would likely  
21 affect a consumer's decision to refinance with Village Capital.

22 26. Therefore, Village Capital engaged in deceptive acts and practices in violation  
23 of the CFPA. 12 U.S.C. § 5536(a)(1)(B).

## Prayer for Relief

Wherefore, the Bureau requests that the Court:

1. permanently enjoin Village Capital from committing future violations of the CFPA, or any provision of “Federal consumer financial law,” as defined by 12 U.S.C. § 5481(14);
2. grant additional injunctive relief as the Court may deem just and proper;
3. award damages or other monetary relief against Village Capital;
4. order Village Capital to pay redress to consumers harmed by its unlawful conduct;
5. order Village Capital to disgorge all ill-gotten gains;
6. impose on Village Capital a civil money penalty;
7. order Village Capital to pay the Bureau’s costs incurred in connection with prosecuting this action; and
8. award additional relief as the Court may determine to be just and proper.

Respectfully submitted,

Kristen A. Donoghue  
*Enforcement Director*  
Jeffrey Paul Ehrlich  
*Deputy Enforcement Director*  
Kara K. Miller  
*Assistant Litigation Deputy*

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## Certificate of Service

I HEREBY CERTIFY that on December 4, 2018, I served a true and correct copy of the foregoing Complaint on the following counsel for Defendant via electronic mail:

David Shirk  
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/s/Benjamin Konop  
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